



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, FIRST SESSION

Vol. 147

WASHINGTON, THURSDAY, NOVEMBER 15, 2001

No. 158

Senate

The Senate met at 10 a.m. and was called to order by the President pro tempore [Mr. BYRD].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Faithful Father, Your words to Joshua so long ago sound in our souls as Your encouragement to us today: "I will not leave you nor forsake you. Be strong and of good courage."

Thank You for the consistency and constancy of Your presence. Your love and guidance are not on again off again. We can depend on Your steady flow of strength. Just to know that You are with us in all the ups and downs of political life is a great source of confidence. We can dare to be strong in the convictions that You have honed in our hearts and courageous in the application of them to our work in government.

Grant the Senators a renewed sense of how much You have invested in them and how much You desire to do through them in the onward movement of this Nation. It is for Your namesake, Your glory, and Your vision that You bless them. You guide and inspire them as leaders because You have great plans for this Nation that You want them to accomplish. You have chosen them. May they choose to be chosen today and lead with spiritual self-esteem motivated by this sense of chosenness. Your word for the day is "Be not afraid, I am with you." You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. DASCHLE. Mr. President, this morning the Senate will conduct a period of morning business with Senators permitted to speak for up to 10 minutes. At 10:30 this morning, the Senate will consider the Agriculture appropriations conference report under a 1-hour time agreement with a vote on the adoption of the report at approximately 11:30. We also hope to consider the Commerce-State-Justice appropriations conference report during today's session. There will be other business as well, perhaps including some additional nominations.

I have just consulted with Senator HOLLINGS in regard to the airport security legislation. He has indicated that negotiations continue. He was encouraged by the progress made overnight. I have discussed the matter at some length with Senator LOTT over the course of the last couple of days. It is his view, as it is mine, that we just cannot leave today, this week, until this matter has been completed.

I know a number of Senators have been interested in the schedule for the balance of the week. I am not able to give them a definitive schedule with regard to votes, either today or tomorrow, until we know the timeframe involved in completing our work on the airport security bill.

It is my hope and expectation that it would be done sometime today. If not, of course, we will then take it up tomorrow, and Senators would be required to stay for the vote on that very important legislation.

I ask Senators' patience. As soon as the progress becomes more apparent, we will make a definitive judgment about the time involved in consideration of the conference report later this week.

I thank Senators for their attention and yield the floor.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business with Senators permitted to speak therein for up to 10 minutes each.

Under the previous order, the Senator from Nevada, Mr. REID, will speak for up to 10 minutes. Under the order previously entered, the junior Senator from Nevada, Mr. ENSIGN, will be recognized to speak likewise for up to 10 minutes.

The majority whip.

YUCCA MOUNTAIN

Mr. REID. Senator ENSIGN and I rise to address the Senate on something we believe is extremely important.

For 20 years now, there have been attempts made to place high-level nuclear waste in the deserts outside Las Vegas. We have always believed that the process has not been fair. Originally, there was supposed to be three sites selected under the 1982 act. Washington, Texas, and Nevada were the three sites chosen.

In 1987, for various reasons, the two other sites were eliminated, and so there is only one site now being focused. That is Yucca Mountain in Nevada.

Let's assume that a person is charged with a crime and they learn later that the prosecutor and the person representing the accused were the same lawyer. People would be outraged. If you were in an automobile accident and you had a trial and you suddenly

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S11869

learned that the person representing you, the person injured, also represented the insurance company, that would be unfair. That is what we have just learned has been going on at Yucca Mountain.

We found that the attorney who was giving advice to Yucca Mountain and being paid up to \$16 million, this law firm also was representing the nuclear power industry.

Senator ENSIGN will outline for anyone within the sound of our voices how this came about that we learned that there was one law firm representing both sides in effect.

Mr. ENSIGN. I thank the senior Senator from Nevada. Back in July of this year, one of the local Las Vegas Sun reporters, Ben Grove, brought out in a news report that there was a potential conflict of interest involving a law firm based in Chicago, Winston & Strawn, which was representing not only the nuclear power industry but also the Department of Energy at the same time. We sent a letter together, dated August 1, to the Inspector General for the Department of Energy, asking that the inspector general look into this conflict of interest. Late yesterday afternoon, the inspector general met with the senior Senator from Nevada and myself and laid out the full report on their findings. As it turns out, the inspector general said that there has been virtually no clear evidence of a conflict of interest in his time period that he has been doing these types of investigations. From September 1999 until July 2001—and by the way, only because of the reporters bringing this thing to the public did Winston & Strawn terminate the relationship with the Energy Institute. But during that period of time, this law firm represented both the Department of Energy and the Nuclear Energy Institute.

Now, to paint what was going on there, the DOE had hired this law firm to give them advice on the licensing process and the legal process for building a permanent repository at Yucca Mountain. During the time that they were supposed to be getting unbiased information, they were being retained by the lobbying group that is pushing Yucca Mountain to be built. This is a clear conflict of interest.

There were over 14 employees, from what we read in the report. This report was released this morning publicly at 8 o'clock. It is on the Internet. But there were 14 employees that had done work both for the Department of Energy and for the Nuclear Energy Institute.

Potentially, up to \$16 million is the total amount of lawyer's fees that the DOE could be paying out to Winston & Strawn for supposedly getting unbiased information. So I tell the senior Senator from Nevada, with this information that we have received—and I know that my friend agrees—there should be a full investigation by the Department of Energy and by the Nuclear Regulatory Institute, and anybody else in-

involved in the licensing of Yucca Mountain, of how severely tainted was the information they received on building Yucca Mountain. This is supposed to be unbiased science and legal information. Was the science biased now? Did the Department of Energy buy biased science? They have obviously bought biased legal work.

So there needs to be a full investigation of this whole process. We have some very serious questions to come before the U.S. Senate next year. The Department of Energy is ready to make their recommendation in a favorable fashion on the suitability for Yucca Mountain. We think we need to put the brakes on all of this and take a whole fresh new look.

So, Mr. President, I say to the senior Senator from Nevada that I think we have some serious, serious matters before us that need the attention of quite a few people as we are going forward.

Mr. REID. If the Senator will yield.

The PRESIDENT pro tempore. The senior Senator from Nevada has the floor.

Mr. REID. As the Senator, my friend, from Nevada has indicated, 14 employees working for this law firm were, in effect, giving advice to both sides. This isn't like representing somebody who may have had a stop sign violation. This is a law firm that has represented the Department of Energy in an attempt to go forward on a licensing procedure that affects the life and safety of tens of millions of Americans. This not only involves the State of Nevada but the rest of this country. The nuclear waste is going to have to travel across this country on highways and railways.

The advice the Department of Energy has been getting from this law firm is tainted. This is a clear case of bias. It is an ethical meltdown. What the people of Nevada need now is a full accounting of how far this misconduct has spread. What my friend, the junior Senator from Nevada, has said is, has this gone over into the scientific calculations and considerations made.

Mr. President, I ask unanimous consent that Senator ENSIGN and I both have 20 minutes, and if the Chair will advise us when we have 2 minutes left.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. The people of Nevada need a full accounting of how far this misconduct has spread. The junior Senator from Nevada is a scientist. He is a doctor of veterinary medicine. He knows how easy it is to misinterpret, miscalculate scientific calculations.

I am a lawyer. I know what it means to have misconduct, to commit malpractice. Certainly, that is what you have here. This is an ethical meltdown. I think what this law firm of Winston & Strawn should be doing today is searching for lawyers to represent them because what they have done is, if not illegal, certainly unethical.

Mr. President, we have done this legislatively with the support of various

administrations. Each Cabinet agency we have has an inspector general who is independent. The inspector general doesn't have to account to the Secretary of Energy. He is independent. Their terms go through different administrations. He was appointed during the Clinton administration, now in the Bush administration. He is giving the best advice that he can give. What he has determined is that this is one of the most serious ethical violations they have ever found in that department, and I think rightfully so.

The American people have spent millions of dollars on a biased report, biased advice given to the Department of Energy.

We can't blame this on the Department of Energy. We blame them for a lot of things, but we can't blame them for this conflict of interest. When they were filing an application to get this account, they asked questions such as: Do you have a conflict of interest? Do you represent parties adverse to giving good advice to the DOE? They said, without any qualifications, no.

I want to ask my friend from Nevada a question. The Senator is a scientist. He has a degree in veterinary medicine. He is a doctor. It is easy to spin science the wrong way, if you choose to do so, and not be fair; is that correct?

Mr. ENSIGN. If the Senator will yield, I will go even further and say that, in science, one of the reasons you even do what are called double blind studies is so that you don't prejudice yourself in going forward with a potential conclusion. What I mean by that—and I will try to give an example on this particular project—you would not want to have people who are saying upfront that Yucca Mountain is safe for a nuclear repository and, therefore, we are going to investigate it and prove that it is safe. You want people to look at it who are going to say: We don't know whether Yucca Mountain is safe or suitable for a nuclear repository or not, but we are going to do the investigation to find out whether it is suitable.

That would be an unbiased view. And then on top of that, if you have people who have a financial interest giving you information, you can imagine how that can taint the whole process.

I say to the senior Senator from Nevada that the potential for bias here in a scientific realm is very great and causes me great concern.

Mr. REID. Mr. President, DOE hired a biased lobbyist and an unethical law firm. What stops them from having already purchased biased or unethical science? Nothing.

I believe we need an independent scientific review of the science, an independent review by scientists who have never received funding from DOE for Yucca Mountain work.

With this review, we would have a program that could stand the light of day. Until we do this, we have a tainted program, one that should be stopped. This involves 43 of our United

States, with train and truck traffic going through every one of those States. This is very serious.

Mr. President, how much time remains?

The PRESIDENT pro tempore. Seven minutes remain.

Mr. REID. I yield the floor.

The PRESIDENT pro tempore. The junior Senator from Nevada.

Mr. ENSIGN. Mr. President, I want to point out a couple other items in this report. First, when the inspector general was giving us the briefing, one of the things that was pointed out to us was that Winston & Strawn had actually recognized in some of their internal documents a potential conflict of interest.

Some of their senior people said that we need to put up some firewalls within our firm to make sure if we have lawyers over here working one way, that they are in no way in concert with some of the lawyers working with DOE, say, versus the Nuclear Energy Institute.

Those firewalls were never put in place. Let me repeat, those firewalls which could have potentially stopped the conflict of interest were never put in place. Instead, 14 lawyers worked on both sides. If this is not a conflict of interest, if this does not spark people's outrage, not only at this law firm—by the way, upfront this law firm was asked: Do you have any clients who would present a conflict of interest?

When we let Government contracts, especially for law firms such as this, they are always asked that same question. From what I understand—and if the senior Senator, being a lawyer, will address this—there are people within law firms, there are ethical panels that review whether there are going to be problems representing one side or the other side to make sure that ethical violations do not occur simply because it is such a serious matter within the legal profession.

Will the senior Senator from Nevada address how that is set up within law firms, the whole ethics committee, to make sure they do not have these conflicts of interest?

Mr. REID. I will be happy to respond to the question of the junior Senator from Nevada.

One of the things we discussed yesterday evening with the Office of the Inspector General when they were going over the report they released this morning is that law firms have built-in mechanisms to prevent conflicts of interest. These large law firms can develop conflicts of interest, so every case they take is submitted to a committee. Even the relatively small law firms in Nevada that have 40, 50, 60 lawyers have an apparatus within them where every new file they take is looked over for conflicts.

I am astounded that Winston & Strawn did not have such a program. If they did not have such a program, that is malpractice. If they did have a program and avoided it, that is an ethical

violation. That is why I have said several times today, I think they need to find themselves a lawyer because what they have done is either criminal or unethical.

Mr. ENSIGN. Mr. President, I want to point out one other item that is in this document to show what a conflict of interest we have. Winston & Strawn not only represented the Nuclear Energy Institute, but they also were representing a company that manufactured the nuclear waste containers. There is no company that would benefit more from having Yucca Mountain built than the company that builds these nuclear waste containers.

If they are representing people who are going to benefit financially from this project going forward—obviously, the Nuclear Energy Institute does as well—clearly the people who make the casks to store the waste are going to benefit hugely financially.

Those same lawyers representing this firm over here and also trying to give the Department of Energy unbiased information is so outrageous it is hard to even conceive.

I hope all our colleagues will take a fresh look at this issue because the Senate is going to be dealing with some very serious issues when it comes to Yucca Mountain over the next 12 months.

I hope, regardless of how people have voted in the past, that my colleagues will take a fresh look and say: Maybe we need a timeout on this issue.

About \$7 billion has already been spent on Yucca Mountain. We appropriated another couple hundred million dollars this year. We are talking a lot of money that is potentially being wasted, being put down a rat hole. All of your colleagues need to take a fresh look at this because the GAO has said it is going to cost over \$50 billion more to finish this project. That is serious money, and we need to take a fresh look.

The PRESIDENT pro tempore. The time of the Senator has expired.

Mr. ENSIGN. I yield the floor to the senior Senator.

Mr. REID. Mr. President, my final statement is, if this law firm, Winston & Strawn, had firewalls set up to see if there was a conflict of interest, these firewalls burned down. They burned to the ground. This law firm, in my opinion, has burned to the ground. They should refund the money to the Department of Energy, and I think the State Bar Association of Illinois should look at proceedings against this law firm.

What they have done gives not only lawyers a bad name but gives the entire process dealing with Yucca Mountain a bad name. With Winston & Strawn's malfeasance, malpractice, and unethical actions, I think they should refund the money, I repeat, and find themselves a good lawyer for the other activities in which they have been engaged.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

VETERANS BENEFITS ACT OF 2001

Mr. REID. Mr. President, I ask unanimous consent that the Veterans' Affairs Committee be discharged from further consideration of H.R. 2540, and the Senate proceed to its immediate consideration.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2540) to amend title 38, United States Code, to make various improvements to veterans benefits programs under laws administered by the Secretary of Veterans Affairs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I understand that Senators ROCKEFELLER and SPECTER have a substitute amendment at the desk. I ask unanimous consent that the amendment be agreed to, the bill, as amended, be read a third time and passed, the amendment to the title be agreed to, the motion to reconsider be laid upon the table, any statements relating to the bill be printed in the RECORD, all with no intervening action or debate.

The PRESIDENT pro tempore. Without objection, the several requests are granted. It is so ordered.

The amendment (No. 2149) was agreed to, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Compensation Rate Amendments of 2001".

(b) REFERENCES TO TITLE 38, UNITED STATES CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. DISABILITY COMPENSATION.

(a) INCREASE IN RATES.—Section 1114 is amended—

(1) by striking "\$98" in subsection (a) and inserting "\$103";

(2) by striking "\$188" in subsection (b) and inserting "\$199";

(3) by striking "\$288" in subsection (c) and inserting "\$306";

(4) by striking "\$413" in subsection (d) and inserting "\$439";

(5) by striking "\$589" in subsection (e) and inserting "\$625";

(6) by striking "\$743" in subsection (f) and inserting "\$790";

(7) by striking "\$937" in subsection (g) and inserting "\$995";

(8) by striking "\$1,087" in subsection (h) and inserting "\$1,155";